(5) Supreme Court, U.S.
FILED
02 12 JUL 1 2002

No.

In The

Supreme Court of the United States

Christopher Langdon, Petitioner,

v.

Lyndo Tippett, Roy Cooper et al.

consolidated with:

Christopher Langdon, Petititoner,

v.

J.J. Swain, Jack Murdock, F.D. Martin et al.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

APPENDIX, PART IV, FOR PETITION FOR WRIT OF CERTIORARI

Christopher Langdon
Pro Se
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Winter Park, Fla. 32789
407-647-7539

35pg

{Exhibit #11}

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
CASE NO:01-1975
FILED
FEB 12 2002
U.S. Court of Appeals
Fourth Circuit

CHRISTOPHER LANGDON,
Plaintiff-Appellant,
versus (Formerly 01-107,
LYNDO TIPPETT, W.D.N.C)
ROY COOPER,[et al.]
Defendants-Appellees

CHRISTOPHER LANGDON,
Plaintiff,
versus (Formerly 01-139,
J.J. SWAIN, [et al.] W.D.N.C)
Defendant-Appellees

THIRD MOTION FOR SANCTIONS

EDITED

(1) When I filed the first two motions for sanctions, I was not aware of the inherent power of courts to impose sanctions, regardless of the rules. *See Chambers v. Nasco, Inc.,*

501 U.S. 32, 115 L. Ed 2d 27, 111 S.Ct. 2123 (1991).

(2) Under its inherent powers, a court may enter a default judgment against a a defendant as a sanction.

" Courts may impose a variety of sanctions under their inherent power, including the following: .... Entering default judgment against the offending party..Disqualifying or suspending counsel..Drawing adverse evidentiary inferences or precluding admission of evidence." *Moore's Federal Practice*, 3rd Edition, Volume 2, Section 11.41[5], pages 11-76, 11-77 (2001).

I believe that a default judgment should be entered against defendants Swain Murdock and Martin because of their conduct and the conduct of their attorneys.

(3) It has been pointed out in the plaintiff's affidavit regarding sanctions, which has been incorporated herein by reference, that the assertions of a movant that aren't denied, are deemed admitted.

" ...we must accept as true the movant's undenied allegations. *Lonsdorf v. Seefeldt*, 47 F. 3d 893, 897 (7th Cir.1995)." *Tobel v. City of Hammond*, 94 F. 3d 360 at 362[4] (7th Cir.1996).

The defendants never responded to the

plaintiff's first and second motions for sanctions, therefore, the assertions contained therein should be deemed admitted.

(4) The Plaintiff's "Second Motion for Sanctions" and "Motion for Sanctions" are incorporated herein by reference.

(5) In the plaintiff's motions for sanctions relief was requested under Rule 11. It has since come to the plaintiff's attention that Rule 11 is not applicable to cases under appeal. However, sanctions are available under the inherent powers of the court and under 28 USC, Section 1927. The relief of a default judgment is available under the inherent power of the courts.

(6) It has been judicially admitted by the defendants, Swain, Murdock and Martin, that they have prevented all meaningful discovery in this matter for over 6 & ½ years. The defendants have admitted, by not responding to the plaintiff's "First Motion for Sanctions," that they have judicially admitted responsibility for the taking of the plaintiff's 6.83 acres. They have also admitted that the assertion in the "Appellees' Brief," that the defendants have consistently denied responsibility for the taking of the plaintiff's property, is false.

(7) The defendants have not presented a viable defense. Even if they had, when there is unreasonable delay by a defendant, the courts may enter a default judgment. In *Link v. Wabash Railroad Co.*, 370 U.S. 626, 82S.Ct. 1386, the U.S. Supreme Court upheld the dismissal of Link's complaint by a District Court in Indiana. The case had been filed 6 years prior to the dismissal and the plaintiff's attorney had not prosecuted the case. There was no discussion as to the merits of the case and there was no proof that Link was responsible for the delay.

In the present case there are more reasons to impose a serious sanction than in *Link* because there is evidence that the defendants, and their attorneys, are both responsible for the delays. These delays in this matter have gone on for

over 6 years and 7months. Unlike Mr. Link, defendants Swain, Murdock and Martin are not blameless for the delays in the present case.

(8) Because the defendants, and their attorneys, have admitted that Swain blocked access to the construction records, the court may assume that the records were evidence of the culpability of defendants Swain, Murdock and Martin. The court may also utilize the sanction of default against the defendants for their delays, concealment and fraud.

" G.N.C.'s conduct creates a presumption that the missing data would have permitted Thompson to prove the ..claims that lie at the heart of its complaints." *W.M. Thompson Co. v. General Nutrition Corp.*, 593 F. Supp. 1443 (C.D. Calif. 1984).

" Imposition of severe sanctions is required in this case by the severity of the abuses that took place. The record shows that GNC deliberately and purposefully undertook a program to impede and obstruct the litigation process, presumably because it believed that the case would be lost if all the evidence ever came to light. Imposition of a lesser sanction [than default] would only reward GNC for misconduct in this litigation." Ibid at 1456.

" Litigant must preserve, and must not alter, documents it knows or reasonably

should know are relevant to imminent litigation.." *Brady v. U.S.*, 877 F. Supp. 444, at 445 (C.D.Ill. 1994)

" Because defendant had prompt notice it 'could have maintained its records and taken testimony of key employees in anticipation of ensuing litigation.' *Howard v. Roadway Express*, 726 F. 2d 1529, 1533 (11th Cir.1984)." *E.E.O.C. v. Jacksonville Shipyards, Inc.*, 690 F. Supp. 995 at 1000-1001 (M.D.Fla.1988).

" Rule authorizing court to impose sanctions for discovery abuse does not apply to alleged destruction of documents which takes place before action is filed and discovery begins; however, such conduct can be sanctioned through the court's inherent powers." *ABC Home Health Services v. I.B.M. Corp.*, 158 F.R.D. 180 at 180[2] (S.D.Ga.1994).

(9) There are additional reasons for sanctioning the defendants by entering a default against them. The defendants have mischaracterized my complaint as being one for inverse condemnation only, which is a sanctionable offense in itself. I am seeking just compensation for the taking of my property. However, I am also seeking compensation for the denial of my rights to notice and opportunity to be heard before the taking of my property, the right to equal protection under the law, due process of law, the right to

petition the government for a redress of grievances, the right of access to the courts and the right to earn a living.

" The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.." *Satterfield v. Edenton-Chowan Bd. of Education*, 530 F. 2d 567, 572 (4th Cir.1975)

" Due process of law means notice and hearing, and in that order. *Gunter v. Town of Sanford*, 186 NC 452, 120 Se 41. It is a minimum content by which a person may be deprived of his life, liberty or property." *Bowie v. Town of WestJefferson*, 57 Se 2d 369, 371[1] (N.C.S.Ct.1950)

" It is a principle never to be lost sight of that no person should be deprived of his property or rights without notice and opportunity of defending them." *Hamilton v. Adams*, 6 NC 161.

Belated notice of the taking of the plaintiff's property is not constitutionally sufficient.

(10) As stated, the plaintiff believes the misrepresentation of the plaintiff's complaint as merely an action for inverse condemnation is an intentional attempt to minimize the plaintiff's claims, and is sanctionable.

" Right to petition the government for a

redress of grievances is cut from the same cloth as the other guarantees of the First Amendment, and is an assurance of a particular freedom of expression." *McDonald v. Smith*, 472 U.S. 479, 86 L. Ed 2d 384, 105 S.Ct. 2787 (1985).

" Right of access to the courts, a fundamental right guaranteed by the United States Constitution, has several constitutional bases, including the First and Fourteenth Amendments, as well as the due process clause ..If motorist's allegations of a thwarted police investigation of collision between motorist and police officer and coverup of the police officer's intoxication were true, the interference with and potential prejudice to his right of access to redress in the state courts rose to the level of a constitutional deprivation of right of access to the courts." *Fisher v. City of Cincinnati*, 753 F.Supp. 681 at 682[3-4] (S.D.Ohio1990).

" Allegations that plaintiff's ability to commence wrongful death action was precluded by conduct of local officials in the destroying evidence and failing to conduct appropriate investigation into individuals death stated viable claim under Section 1983. U.S.C.A. Const. Art.4, Sections 1 et seq., 2, cl. 1; Amends 1,5, 14." *Stump v. Gates*, 777 F. Supp. 808, 809[6] (D.Colo. 1991).

" There is no requirement of specific intent

in actions under 1871 civil rights statute, and if defendants did not intend to harm plaintiff by their actions, liability was not for such reason precluded..Defendants could be liable for alleged actions prejudicial to plaintiff's chances of recovery in state court in view of fact that resulting delay would cause stale evidence and fading of material facts in minds of potential witnesses, and that it could prove more expensive to litigate such action..Any interference with substantive constitutional right, such as right of access to the courts, may alone amount to constitutional deprivation.." *Ryland v.Shapiro*, 708 F. 2d 967, 968 [12-14] (5th Cir.1983)

The entering of a default judgment is the only fair sanction to properly vindicate the plaintiff's right of access to the courts. The U.S. Supreme Court has repeatedly held that access must be meaningful and at a meaningful time and is extended to prisoners. *See: Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491 at 1495 (1977). Certainly, the right should

not be denied to law-abiding, tax-paying citizens as well. The defendants' de-lays, past and present, have denied the plain-tiff-appellant meaningful access to the courts at a meaningful time.

(11) The defendants filed three motions for an extension of time to file a response in 01-139 (W.D.N.C.) (now 01-1975). The defendants' attorney failed to discuss the motions with the plaintiff before filing them, in violation of Rule 7.1(A) of the *Rules of Practice and Procedure of the United States District Court for the Western District of North Carolina* (Exhibit 1). Violation of the local rules is a sanctionable offense.

(12) The defendants' attorneys referred to a landslide or landslides on the plaintiffs property in their brief. The references are as follows:

(a) " On or about June 1995, a landslide or landslides occurred on property owned by Plaintiff which abutted North Carolina Secondary Road 1116." page 4of "Appellee's Brief," Exhibit 2

(b) " ..landslide or landslides.." Ibid, page 5, lines 1 and 2, page 8, line 1.

(c) " The landslide or landslides that precipitated the instant case took place in 1995." Ibid, page 16, lines 7-8.

(13) The preceding statements from the defendants' brief are false and a misrepresentation of a material fact. The damage to the plaintiff-appellant's property did not occur during a single landslide, but over a long period of time during many numerous, small slides. That is what the plaintiff-appellant has always alleged.. The attorneys for the defendants have never submitted any affidavits to the contrary.."

(14) The defendants' attorneys in the present case contradicted themselves by referring to the damage occurring during a landslide or landslides. It has to be one, or the other, because both scenarios can't be true. This is similar to a fraud perpetrated on the court in 98-cvs-139, Polk County, by T.L. Malonee, the same NCDOT attorney that had the construction records for the road that goes through the plaintiff-appellants property removed to his office in Asheville, N.C., contrary to the public records law.

(15) Let me interject that it is not my intention to re-litigate 98-cvs-139 herein, nor is it my intention to litigate by implied consent any issues that have been deemed admitted by the defendants, nor is it my intention to waive any objections that I have made regarding the failure of the defendants to file an answer in 01-139 (W.D.N.C.).

...(19) ...Malonee deceived the court into the believing that the damage to the plaintiff's property occurred on a single date and that there was an applicable statute of limitations from that date. I am not r-arguing that case, I am trying to show the Court why Malone deceived a previous court and to show how that relates to some of the deceit by the defendants' attorneys in the present case.

....(24) Because the defendants have not supplied any affidavits in support of their 'Appellee's Brief,' one can assume that the brief was filed for dilatory purposes and, therefore is sanctionable.. Summary: The imposition of sanctions against the defendants and their attorneys is appropriate for the following reasons: (A) The defendants' attorney, R. Crawford did not consult with the plaintiff-appellant before filing any of the three motions for an extension of time before filing them, contrary to the local rules. (B) The defendant-appellees' attorneys misrepresented the number of slides on the plaintiff's property whenever they referred to a landslide, rather than landslides. (C) It may be assumed that the construction records in question were spoiled while under the control of NCDOT attorney Malonee (D) The failure of the NCDOT's attorney to submit any affidavits to suport its motions for an extension of time, or, to support its 'Appellee's Brief.' It can be assumed that the 'Appellees' Brief was file for dilatory purposes. (E) When taking the offenses cited herein, along with the un-denied allegations in the first two motions for

sanctions, it is clear that the sanctions of a default judgment, along with costs, are the only adequate sanctions....

I solemnly affirm that everything contained herein is true and correct, except those matters asserted under information and belief, and those matters I believe to be correct.

Christopher Langdon, Plaintiff "s/_____".

Suscribed to and sworn before me, this the 9th day of February, 2002.

Notary Public "s/_____".
Permanand Bhikha
My commission DD009669
Expires March 15, 2005

The plaintiff-appellant certifies that a copy of this third motion for sanctions was mailed to: Robert Crawford and Lisa Glover, 1505 Mail Service Center, Raleigh, N.C. 27699-1506, this the 9th day of February, 2002. Furthermore, the plaintiff- appellant certifies that he faxed a copy of said attorneys to inform them that he was going to file motions for sanctions and that they could contact him if they wished to discuss them. They did not do so.

Christopher Langdon,
Plaintiff-Appellant "S/_____".
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{EXHIBIT # 12}

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
CASE NO: 01-1975
FILED FEB 25 2002
U.S. Court of Appeals Fourth Circuit

CHRISTOPHER LANGDON,
PLAINTIFF-APPELLANT,
versus
J.J. SWAIN,
JACK MURDOCK,
F.D. MARTIN,
DEFENDANT-APPELLEES

CHRISTOPHER LANGDON,
PLAINTIFF-APPELLANT,
versus
LYNDO TIPPETT, ROY COOPER,
ET ALIA,
DEFENDANT-APPELLEES

PLAINTIFF-APPELLANT'S FOURTH MOTION FOR SANCTIONS

(1) The plaintiff-appellant believes that the sanctions of a default judgment and double costs should be entered against defendants Swain, Martin and Murdock for the following reasons:

(2) In their "Appellees' Brief" the defendants' attorneys stated: "NCDOT and its employees have consistently denied any responsibility for the landlside or landslides..." (Pages 7-8). That statement is false and the defendants' attorneys know that it is false. The false statement is intended to deceive the Honorable Court of Appeals in order to cloak the defendants with a false aura of integrity.

(3) The plaintiff-appellant has already shown that the statement is false in the plaintiff-appellant's first motion for sanctions. It is not the plaintiff's intention to relitigate those assertions which have not been denied. It is the intention of this paper to show that when the defendants Swain, Murdock and Martin denied responsibility for the landslides, they did not do so consistently and that they have acted in bad-faith, contrary to their attorneys' assertion in their brief.

(4) Nothing contained herein is a waiver of any objections that the plaintiff-appellant has to the timeliness of the defendants' motions for an extension of time, their failure to file an answer in 01-139, W.D.N.C., and the possibility that their brief may have not been timely filed.

(5) After the initial micro-slide of approximately 15 sq. ft. within the NCDOT's right of way, I spoke to defendant Swain, the NCDOT District Engineer at the time. He looked at the property on his own, refusing to view it with me. I met with him afterwards and he urged me to correct the problem on my own, including doing work within the NCDOT's right of way. At no point in his letter (Exhibit 1) did he state what he believed was the cause, or causes, for the situation.

(6) I then wrote defendant Murdock about the situation. At the time, Murdock was the NCDOT engineer in charge of all the secondary roads in N.C. I also wrote a small, local newspaper asking that anyone who was concerned about the situation write to Murdock. Murdock responded by suggesting that I was responsible for the situation (Exhibit 2). As bizarre as it may seem, Murdock's basis for the accusation was a letter he received from a nearby resident that blamed me. It is my understanding that it was a woman who had a personal vendetta against me. She is not an engineer.

(7) In his letter of July 17th, 1995, NCDOT engineer Ledbetter cited the steepness of the terrain and heavy rainfall as the most likely causes. He also falsely stated that I had clear

cut the property.

(8) In a letter dated July 20th, 1995, NCDOT engineer D.R. "Dave" Henderson stated that: "The extremely wet conditions experienced within the past 24 months would be the most likely cause for the instability of the previously stabile slope." In his letter, Henderson also denied NCDOT responsibility. Copies of this letter were supplied to me by Murdock and Swain.

In his letter, Henderson recommended that I move the NCDOT's drainpipe. In his accompanying letter (Exhibit 1), Swain stated that:

"..any activity that you plan within the right of way..must be approved by this office..This would include your connecting onto our existing drainage pipe to redirect the water ***as suggested in Mr. Henderson's report."*** I took that to mean that Swain was endorsing Henderson's assertion that the situation was caused by the "extremely wet

conditions." I assume that he was endorsing that viewpoint because he sent me Henderson's letter.

(9) In a letter (report) dated simply "July 1995," NCDOT engineer F.R. Glass stated: " As I understand it, no problems on this roadway were apparent until clearing operations on this property were started.

(10) In a report dated August 16th, 1995, F.D. Martin, a defendant in the present case, stated that :

" I can't really say that the clearing of the trees actually triggered the slide..***I think that the slide would have occurred without the clearing*** or the presence of the pipe." Exhibit 3, page 2.

(11) In a report dated February 20th, 1996, F.D. Martin stated that:

" I have once more reviewed this situation with our District Engineer, Mr. J.J. Swain, Jr., P.E. and ***it is still the opinion*** of this department that the movement of the earth mass in this area has probably been caused simply due to the geologic formations and instability of the area." Exhibit 4.

How could it still be the opinion of defendant Swain, defendant Martin, and

the NCDOT that the slides were caused by "geologic formations" when they, nor any other NCDOT engineer, had ever put forth that notion previously ? I have cited six reports by NCDOT engineers, including one by Martin and one by Swain, and none of those reports made any reference to "geologic formations" as a cause of the situation.

(12) On March 7th, 1996, an article on the situation ran in the local newspaper, *The Tryon Daily Bulletin.* In that article, Dennis Allen, the NCDOT maintenance engineer for Polk County, N.C., the county the property is located in, was quoted as saying that: " We're just saying that, really, as far as what's causing the problem, it could have been the tree cutting." The article also quoted Glass's report that indicated that I was responsible for the situation.

The article also quoted NCDOT engineer Allen, a subordinate of Swain's, that I was mismanaging other property that I had built on. I contacted NCDOT engineer Allen and asked if he was correctly quoted. He replied "yes" and I then asked him what he was referring to when he said that I was mis-managing property that I was building on. I was not building on any property at the time.It turns out that he mistook someone else's

property as mine. I explained to him how NCDOT engineer Martin had stated in one of his reports that the clearing of a few trees was not the cause of the situation and I asked him to write a retraction. He refused to do so. I then wrote to Swain and Murdock asking them to retract the comments made by their subordinates and I received no response.

It should be noted that, according to my information, the woman referred to in Murdock's letter(Exhibit 2), the one that claimed that I was responsible for the situation, was also the person that went to the *Tryon Daily Bulletin* and got them to write the libelous article containing the libelous comments of the NCDOT engineers.

The article destroyed my reputation and my real estate business in Polk County, N.C. People began calling me and harassing me. People were accosting me in stores, on the streets and in other public places demanding that I correct the problem before it got worse. My "for sale" signs were being torn down faster than I could put them back up. I advised my clients that I could not represent them. Almost all of my real estate projects had been privately financed. I could no longer get financing. I had trouble paying my debts. One creditor threatened me

with a pistol.

I then worked doing home repairs and moved to the eastern part of N.C. in 1998, and to Florida in 1999. I have not made any money in real estate since these problems began.

If Murdock had told the woman in question the truth, that I wasn't responsible for the situation, it would have helped alleviate my problems. A public retraction would have also helped.

(13) Martin wrote a third report on the situation, dated 29 March 1996. In that report he stated:

" Early on when this problem began to surface, some comments were made by parties other than the Department of Transportation that perhaps the slide might have been caused by the removal of timber cover. This office has never made such statements and, as a matter of fact, in one of our earlier letters, we indicated that it is not our feeling that the clearing operations caused the slide, rather it is our feeling that the slide is simply caused by an unstable earth mass which has begun to move for some reason or other..we have not voiced an opinion as to what caused the slide...we are not blaming the property owner." Exhibit 5,

page 2.

You will note that there was no mention of a "geologic formation" in the letter. Please also not that Martin falsely states that no one in the Dept.of Transp. had indicated that the plaintiff-appellant was responsible for the situation. I have already shown herein that, previous to Martin's letter of March 29th, 1996, NCDOT engineers Murdock, Allen, Glass and Ledbetter had made statements blaming me and/or strongly inferring that I was responsible for the situation.

Swain also made comments strongly inferring that I was responsible for the situation because I had cut some trees. Defendant Swain was interviewed for an article on the situation that appeared in *The Hendersonville-News Times*. He was also interviewed for a tv news program on Channel 13, Asheville. In both interviews he strongly inferred that I was responsible for the situation.

(14) Let me again re-iterate that I am not trying to re-litigate the question of NCDOT responsibility by reciting their various denials. The question of liability has been settled by the plaintiff-appellant's first motion for sanctions, complaint in 01-139 and brief in 01-1975.

I am trying to show that the NCDOT engineers were not consistent when they denied responsibility, contrary to the "Appelees' Brief." I am also showing that they acted in bad faith, contrary to an assertion in the "Appellee's Brief." Although these events may have been alluded to in other papers, it is my understanding that a motion for sanctions must be separately filed.

(15) In a letter dated 7 July 1998, the N.C. Secretary of Transportation at the time, E. Norris Tolson, stated that the NCDOT geotechnical staff was "of the opinion" that the cause of the situation was "geologic formations."

(16) Only one set of interrogatories regarding these matters that was ever "answered" so far. In a response to interrogatory #3, 98-cvs-139, Polk County, Swain was asked if the NCDOT was contending that the slides were caused by a geological abnormality or because I cut a few trees on my property. In his notarized response, Swain would not give any reason for the slides. He stated: "The exact cause of the slide has not been determined by the NCDOT."

If the NCDOT wasn't sure what caused the slides, how could it have honestly accused

me of causing the slides, or, blamed the slides on a "geologic formation"? Obviously, they couldn't have.

(18) A chronology of the false and contradictory statements is as follows:

(a) In July of 1995 I met with defendant Swain, the NCDOT District Engineer at the time, and NCDOT engineer Allen. Swain suggested that I undertake construction work to correct the situation. Swain recommended that I build a retaining wall at the base of the property within the NCDOT's right of way; that I move the NCDOT's drainpipe, and that I regrade the property between the two, including property within the NCDOT's easement and beyond it. Swain never stated, an opinion as to the cause of the situation and neither did Allen.

(b) I asked Swain to put his recommendations in writing and he responded via his letter of 26 July 1995(Exhibit #1). Nowhere in his letter did he state, or infer, that the plaintiff-appellant was responsible for the situation. Nowhere in the letter did Swain suggest that the situation was caused by a "geologic formation." In his letter, Swain admitted that he had done no study of what he termed "your

problem." Without doing a study, he determined it was my problem.

(c) Attached to Swain's letter was a copy of a letter by NCDOT engineer Dave Henderson dated 20 July 95. In that letter, Henderson blamed the situation on "extremely wet conditions." He also recommended that I move the outlet of the NCDOT's drainpipe. In Swain's accompanying letter, Swain stated that I would have to get the NCDOT's permission before undertaking construction work within the NCDOT's right of way. Nowhere in the letter ("report") did Henderson attribute the situation to any tree removal or any "geologic formation."

(d) I complained to Jack Murdock, the NCDOT engineer in charge of secondary roads within the State of N.C. In his letter dated 2 August 1995, Murdock suggested that I was responsible for the situation because I had cut a few trees for a building site. He forwarded this opinion at the suggestion of a neighbor who is not an engineer, and despite the fact that neither Swain, nor Henderson, put forth that opinion in either of their "reports." Murdock did not mention any "geologic formation" in his letter (Exhibit 2) and hadn't visited the site.

(e) In a letter dated 17 July 95, NCDOT engineer Ledbetter cited the steepness of the terrain and rainfall as the causes. He also falsely stated that I had clear cut the property. Ledbetter failed to mention that the steepness of the NCDOT's bank is the responsibility of the NCDOT. Ledbetter never mentioned any "geologic formation."

(f) F.D. Martin wrote three letters ("reports") on the situation. In his first letter dated 16 August 1995, on page 2, (Exhibit-3) Martin stated that he thought that the clearing was not the cause of the slides. Martin did not mention that a "geologic" formation was the cause of the situation. He ventured no cause for the situation.

In his second letter, dated 20 February 1996 (Exhibit 4), Martin states the cause is a geologic formation,"after reviewing the situation with Swain In his third letter dated 29 March 96 (Exhibit 5), Martin doesn't mention a "geologic

formation." He did state that the bank has begun to move for "some reason or other." He also absolved the plaintiff-appellant of any responsibility and threatened to have the plaintiff-appellant charged with any cleanup cost, should any dirt move onto the paved section of NCSR 1116 ("Hogback Mt. Rd.). Martin also falsely stated in his last "report" that no one in the Dept. of Transp. had blamed the plaintiff-appellant for the situation and he gave the distinct, false impression that the "geologic formation" excuse has always been the NCDOT's officially designated cause for the situation.

(g) NCDOT engineer Allen made comments in the *Tryon Daily Bulletin* blaming the plaintiff-appellant for the situation and deriding the plaintiff for the management of property he didn't even own or have any control over. Swain also made comments to the media, print and television, that strongly inferred that the plaintiff-appellant was responsible for the slides. Swain, Allen and Murdock refused to apologize for the comments personally, or, on behalf of the NCDOT.

(h) The Secretary of Transportation stated in a letter dated 7 July 1998 that it was the opinion of the NCDOT's geotechnical department that the situation was

caused by " geologic formations and the instability of the steep slopes." Blaming the slides on unnamed "geologic formations" seems strange because that excuse had not been put forth by NCDOT engineers Swain, Murdock, Allen, Glass, Ledbetter, Henderson, or Elvey Thomas, all of whom , except Murdock, had allegedly viewed the property. The steepness of the NCDOT' bank, referred to as "steep slopes" in the Secretary of Transportation's letter, was a cause of the problem. The NCDOT has refused, and still refuses to accept responsibility for the steepness of the terrain within their right of way.
(i) On March 2nd, 1999, Swain signed a verified answer to an interrogatory in which he stated that: " The exact cause of the slide has not been determined by the NCDOT."

(19) As you can see, defendants Swain, Murdock and Martin have made numerous statements regarding the cause of the slides that contradict each other and, in some cases, themselves.

(20) It should also be noted that in the plaintiff-appellant's complaint against Murdock, Swain and Martin, which is incorporated herein by reference, the plaintiff stated on page 5, section 26, that in

a hearing before the North Carolina Industrial Commission, Deputy Commissioner Douglas E. Berger presiding, that "The attorney for the NCDOT, Michael Warren, stated during the hearing that any statements made by the NCDOT engineers stating and/or inferring that I was re-

sponsible for the slides on my property were false and that the engineers making those statements knew they were false when they made them."

The defendants' attorneys did not supply an affidavit from NCDOT attorney Warren to the contrary, nor did they supply any affidavits from any of the defendants denying that they had made false accusations against the plaintiff-appellant. I don't recall any denial in the "Appellee's Brief" that Warren had made such an admission. The un-denied statement in the plaintiff-appellant's verified complaint (01-139, W.D.N.C., now 01-1975) should be deemed admitted.

Furthermore, the plaintiff-appellant has filed a related complaint against the current Secretary of Transportation, Lyndo Tippett, for injunctive relief. In the verified complaint, case no: 5:01-cv-906-BO(3), the plaintiff-appellant stated on pages 5-6 that: " An NCDOT attorney, Michael Warren, admitted in a hearing before the North Carolina Industrial Commission, that the NCDOT engineers that blamed me for the problems of the NCDOT's bank knew that I wasn't responsible and they made the assertions anyway."

The assertion of the plaintiff-appellant went un-denied, and no affidavits were filed to the

contrary. As shown herein, defendants Swain and Murdock knowingly made false statements stating, or implying, that the plaintiff-appellant was responsible for the slides.

NCDOT attorney Warren also admitted that any statements by NCDOT engineers that asserted that I had clear cut my property, or, had cut most of the trees on my property were false and those making such statements knew they were false when they made them. In his first "report," Martin falsely stated that I had cut most of the trees on my property.

(21) In the plaintiff-appellant's verified complaint against Swain, Murdock and Martin (01-139, (WDNC), page 3-4, Section #16, the plaintiff-appellant stated:
"..the NCDOT came up with a new fraud. They began claiming that the micro-slides were caused by a geological formation."

The defendants never denied the plaintiff-appellant's assertion in the "Appellee's Brief" that I am aware of. None of the defendants supplied affidavits to the contrary.

In his order of dismissal, Judge Thornburgh relied, in part, on the "defense" that *he* believed that the NCDOT engineers had stated that there was no geological evidence to implicate the NCDOT and its engineers. In actuality, one NCDOT engineer, out of seven that viewed the situation, stated in one of his

three report that the situation was caused by a geologic formation.

In any case, it has been judicially admitted by the defendants that the baseless theory of a geologic formation was a fraud. Those same defendants and their attorneys are asking the Honorable Court of Appeals to ratify the dismissal of the plaintiff-appellant's case, despite the fact that it was based on a fraudulent "theory" that was promulgated by defendant Martin.

(22) On pages 4-5, Section # 21of the plaintiff-appellant's complaint in 01-cv-139, W.D.N.C., now 01-1975, the plaintiff-appellant stated that :

" I later learned by accident that there is a *Design Manual* published by the NCDOT. I was told by one of the authors of the manual, Mr. Shearin, that the NCDOT's bank on my property was not sloped according [to] the NCDOT's standards contained in the *Design Manual.*"

I do not recollect any denial of the preceding statement in the "Appellee's Brief," nor did any of the defendants supply any affidavits to counter the plaintiff-appellant's verified statement. Therefore, I ask that the statement be deemed admitted.

(23) There is plenty of evidence contained

herein to support a finding of bad faith and a default judgment as a sanction.

" Bad faith' may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation.' *Hall v. Cole,* 412 U.S. 1, 15, 93 S.Ct. 1943, 1951, 36 L.Ed 2d 702 (1973). See *Browning v. Debenture Holders' Comm. v. DASA Corp.,* 560 F. 2d 1078, 1088 (CA2 1977)." *Roadway Express, Inc. v. Piper,* 447 U.S. 752, 65 L. Ed 2d 488, 100 S.Ct. 2455 at 2464[16] (1980).

" District Court's sanctioning insurer by entering default judgment..was proportionate to insurer's willful failure to comply with discovery orders and its record of contumacious conduct." *Crown Life Insurance Co. v. Craig,* 995 F. 2d 1376 at 1376[2] (7th Cir.1993).

(24) There other examples of bad faith on the part of the defendants. On page5, Section # 22, the verified complaint in 01-cv-139, W.D.N.C., now 01-1975, states:

"Swain, Murdock and Martin concealed from me the fact that the NCDOT's bank was not properly sloped according to the NCDOT's own standards."

There was no denial of that verified statement. In fact, there was no denial in the "Appellee's Brief" of any of the claims and assertions put forth in the Plaintiff-Appelant's complaint in 01-139, WDNC. The only denial was the denial cited herein that appears on pages 7-8 of the "Appellees' Brief." That denial states:

"NCDOT and its employees have consistently denied responsibility for the landslides, and have denied causing Plaintiff any other harm. The first part of that statement has been proven false in the un-denied assertions in the plaintiff's first motion for sanctions, and in this motion for sanctions. The entire statement is conclusional and not supported by any affidavits.

" Conclusional denials of conspiracy in affidavits obviously drafted by lawyers are entitled to little weight.." *Products Liability Insurance Agency v. Crum & Forster Insurance Companies*, 682 F. 2d 660 at

660[1] (7th Cir.1982).

The defendants made no denials in their brief of the numerous factual and legal assertions and claims in the plaintiff-appellant's complaint (01-139, WDNC, now 01-1975). Those assertions and claims were substantiated and include claims that the defendants, Swain, Martin and Murdock conspired to deprive me of my rights to: due process of law; equal protection under the law; notice and opportunity to be heard before taking a citizen's property; meaningful access to the courts; and numerous other claims and factual assertions. All of the factual assertions and claims contained in the plaintiff-appellant's complaint, 01-139, WDNC, should be deemed admitted.

(25) The sanction of a default judgment in the amount sought in the palintiff-appellant's motion for default judgment is the most appropriate remedy, especially when the facts herein are considered in the light of the facts contained in the other motions for sanctions and papers field by the plaintiff-appelant.

I, Christopher Langdon, solemnly affirm under oath that everything contained herein is true and correct, except those matters asserted on information and belief and those

matters I believe to be true and correct.

A copy of this document has been mailed to: Robert Crawford and Lisa Glover, 1505 Mail Service Center, Raleigh, NC 27699-1505, this the 21st day of February, 2002. Crawford and Glover were advised of the plaintiff's intention to file motions for sanctions and did not indicate any willingness to discuss them.

Christopher Langdon, Plaintiff "s/_____".
1835 Edwin Blvd., Winter Park, Fla. 32789

Suscribed to and sworn before me, this the 21st day of February, 2002.

Notary Public "s/_____".
April Jinnette Hittel
My Commission # CC 781369
EXPIRES: October 7, 2002